IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Crl.Rev.Pet.No. 404 of 2000

CRA.41/1998 of SESSIONS COURT, THRISSUR
CC.378/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

REVN. PETITIONER/APPELLANT/ACCUSED:

ASOKAN, S/O. KANDAN,
MALIPURAM DESOM,
ELAMKUNNAPUZHA VILLAGE,
KOCHI TALUK.

BY ADV. SRI.K.A.JALEEL
SRI.T.T.MUHAMOOD

RESPONDENTS/RESPONDENTS/COMPLAINAT & STATE:

1. **NEELAMBARAN, S/O. AMBALASSERY RAGHAVAN,**
   THAMBANKADAVU DESOM, THALIKULAM VILLAGE,
   CHAVAKAD TALUK.

2. **THE STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,**
   HIGH COURT OF KERALA, ERNAKULAM.

ADV.SRI. SUBASH CHAND P.P
ADV. SRI.K.D.PAUL DALIN -- R1
PUBLIC PROSECUTOR SRI. P.N. SANTHOSH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY, J.

Crl.R.P.No.404 OF 2000

Dated 26th September, 2007

ORDER

The revision petitioner is the accused in C.C.No.378/1996 on the file of the Judicial Magistrate of the Ist Class, Chavakkad. The complaint was filed by the first respondent alleging offence punishable under Section 138 of the Negotiable Instruments Act. According to the complaint filed by the first respondent, on 17.10.1994 the revision petitioner borrowed an amount of Rs.75,000/- from the first respondent and for discharging the said liability the revision petitioner issued a cheque dated 29.6.1996 drawn from Perumpilly Co-operative Society. The said cheque was presented for collection and returned dishonoured due to insufficiency of funds on 8.7.1996 and a demand notice was issued to the revision petitioner calling upon him to pay the amount. Despite the receipt of notice on 10.7.1996, revision petitioner failed to pay the amount and thus the revision petitioner committed the offence punishable under Section 138 of the Negotiable Instruments Act. To prove the case, prosecution examined PWs 1 to 3 and marked Exts.P1 to P7. After closing of prosecution evidence, the revision petitioner was questioned under section 313 of Cr.P.C. The revision petitioner denied all the allegations. No defence evidence was produced by the revision

petitioner. PW1 complainant deposed that on 17.10.1994 the accused borrowed an amount of Rs.75,000/- from him. For discharging the said liability he issued a cheque drawn from the Perumpilly Service Co-operative Bank putting a date 29.6.96. The cheque was presented for collection at South Indian Bank, Vatanappilly branch. On 8.7.1996 it was returned dishonoured with a memo `Not arranged for'. On 9.7.1996 a lawyers notice was issued and even though the accused accepted the notice on 10.7.96, the amount was not repaid.

2. The cheque of Perumpilly Service Co-operative Bank No.9004 is marked as Ext.P1 and memo issued from the society is marked as Ext.P2. The memo of South Indian Bank is marked as Ext.P3. The copy of notice is marked as Ext.P4. The postal receipt by which the notice was sent is marked as Ext.P5. The A.D.card by which the accused accepted the notice is marked as Ext.p6.

3. PW2 is the Secretary of Perumpilly Co-operative Society, Njarakkal. The copy of true extract of the account of the accused is marked as Ext.P7. Ext.P1 cheque was presented for collection on 8.7.96 and it was returned along with Ext.P2 memo due to insufficiency of funds. On the day of dishonour the balance in the account was Rs.102.15.

4. PW3 is the branch Manager of South Indian Bank,

Vatanappilly branch. He deposed that Ext.P1 cheque was returned dishonoured along with Ext.P3 memo on 8.7.1996. The complaint was filed after fulfilling all statutory formalities. Execution of the cheque is not disputed. According to the defence, for discharging a liability of Rs.20,000/-, Ext.P1 cheque was issued. But, that also was not proved and revision petitioner was not able to rebut the presumption under Section 139 of the Negotiable Instruments Act. Therefore, Magistrate's Court convicted him and imposed the following punishment:

> "Considering the nature and circumstances of the case, I don't find any reason to invoke the Probation of Offender's Act. He is sentenced to undergo simple imprisonment for six months for the offence under Section 238 of the Negotiable Instruments Act. He is also directed to pay the cheque amount i.e., Rs.75,000/- as compensation to PW1 under Section 357(3) of Cr.P.C. In default of payment of compensation to undergo simple imprisonment for six months."

The appellate court confirmed the conviction, but, modified the sentence as follows:

> "a) This appeal is allowed in part.
>
> b) The verdict of guilty and conviction of the appellant u/s.138 of the N.I.Act are upheld.
>
> c) But the sentence imposed on the appellant by the learned Magistrate u/s.138 of the

N.I.Act. is modified and reduced. In supersession of the sentence imposed by the learned Magistrate u/s.138 of the N.I.Act he is sentenced to undergo simple imprisonment for 5 days. (Five)

d) The appellant is further directed u/s.357(3) Cr.P.C. to pay an amount of Rs.80,000/= (Eighty Thousand) as compensation and in default of payment to undergo simple imprisonment for a period of three months. Out of the amount if realised, Rs.77,000/- shall be paid to the complainant as compensation and Rs.3,000/- shall be credited to the State for the loss suffered by it in terms of judicial time and resources spent by it for the resolution of the controversy between parties."

We see no ground to interfere with the conviction under Section 138 of N.I.Act and finding entered concurrently by two courts, in revisional jurisdiction. Appellate Court was very lenient in modifying the sentence.

The revision petition is dismissed.

J.B.KOSHY
Judge

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